

**REMARKS**

Reconsideration and allowance of the subject application in view of the foregoing amendments and the following remarks is respectfully requested.

Claims 1-23 are pending.

Claims 1, 2, 8, 9, 10, 13, 16, 19, 20, and 23 are amended to remove issues related to intended use and in view of independent claim amendments.

The PTO's response to amendments/arguments at page 2, section 1 of the present Final Official Action mailed September 19, 2007 is noted, however, Applicant respectfully continues to disagree with the PTO's interpretation. In view of the PTO's: (1) admission that Applicant's previously-submitted arguments were persuasive and (2) withdrawal of the applied reference, further discussion is believed unnecessary.

**Objection to claim 10**

The objection to claim 10, and possibly claims 1, 13, 16, 19, and 23 depending on the portion of the present Official Action referred to, is believed overcome in view of the foregoing amendments. Withdrawal of the objection is respectfully requested.

At the outset, Applicants point out that the PTO at page 5, section III, item 12 states that claims 10-12, 16-18, and 23 are rejected, however, none of the reasons set forth in paragraphs 13-21 appear to pertain to any of claims 10-12, 16-18, and 23. Applicant assumes that the PTO intended to style the rejection as a rejection of claims 1-9, 13-15, and 19-22. If this is incorrect, the PTO is respectfully requested to provide clarification.

**Amended and unamended claims 1-9, 13-15, and 19-22 are patentable over Fermilab et al. (“Release Note 39.2 The ‘juke’ Jukebox Control Package User/Programmer Guide”)**

The rejection of claims 1-9, 13-15, and 19-22 under 35 USC 103(a) as being unpatentable over Fermilab is hereby traversed.

First, amended claim 13 recites a planner configured to order a list by physical location of at least two backup devices which is neither found nor suggested by Fermilab. The PTO agrees and admits that Fermilab “does not appear to explicitly disclose ordering the list provided to the program of Appendix A by physical location of the backup.” FOA at page 5, item 13. Instead, the PTO asserts that Fermilab discloses ordering a list by physical location of backup devices in the section titled, “Loading Tapes into Drives.” This is incorrect.

Fermilab appears to describe control, i.e., via “juke”, of a single backup device, i.e., a jukebox, and **not** at least two backup devices as claimed in the present claimed subject matter. The Fermilab jukebox corresponds to a tape library which is a backup device. See the instant specification at page 4, paragraph 12, “backup devices may be tape libraries.” See also, the definitions for “jukebox” and “tape library” as found in Attachment A hereto from the Computer Desktop Encyclopedia. For at least this reason, withdrawal of the rejection is respectfully requested.

Further, the definition of “jukebox” as used in Fermilab states that a **“jukebox is a device which has storage locations for media,** drives used to access that media, and mechanism for moving the media from drives to storage locations.” See Fermilab at “Terms” subsection “jukebox” (emphasis added). Thus, the jukebox is considered, by Fermilab, to be a backup device and therefore Fermilab fails to disclose or suggest the

claimed at least two backup devices. For at least this additional reason, withdrawal of the rejection is respectfully requested.

Second, even assuming *arguendo* that the drives of the jukebox correspond to a backup device, the PTO-identified portion of Fermilab fails to disclose more than one backup device. Nowhere at pages 1-3 of the section titled, "Loading Tapes into Drives" does Fermilab list more than one drive, i.e., "drive 0", as a result of executing the list command. The slots listed correspond to slots, i.e., "storage location[s] used to hold a piece of media," for tapes prior to use in a drive and do not correspond to a backup device. Based on a plain reading of the PTO-identified portion of Fermilab, there is no disclosure or suggestion of ordering drives by physical location. For at least this additional reason, withdrawal of the rejection is respectfully requested.

Third, and related to the second item above, without knowledge of the physical layout of the drives of the jukebox, the PTO appears to be relying on speculation regarding the ordering basis for any list generated by the "juke" software. For at least this additional reason, withdrawal of the rejection is respectfully requested.

Based on each of the foregoing, claim 13 is patentable over Fermilab and withdrawal of the rejection is respectfully requested.

Claims 14-15 depend, either directly or indirectly, from claim 13, include further features, and are patentable over *Fermilab* for at least the reasons advanced above with respect to claim 13. The rejection of claims 14-15 should be withdrawn.

Claims 1 and 19 are patentable over Fermilab at least for reasons similar to those advanced above with respect to claim 13 and withdrawal of the rejection is respectfully requested.

Claims 2-9 and 20-22 depend, either directly or indirectly, from claims 1 and 19, respectively, include further features, and are patentable over *Fermilab* for at least the reasons advanced above with respect to claim 13. The rejection of claims 2-9 and 20-22 should be withdrawn.

**Amended and unamended claims 10-12, 16-18, and 23 are patentable over Fermilab in view of Kanai (US Published Application 2002/0152181)**

The rejection of claims 10-12, 16-18, and 23 under 35 USC 103(a) as being unpatentable over Fermilab in view of Kanai is hereby traversed.

Amended and unamended claims 10-12, 16-18, and 23 are believed patentable over Fermilab in view of Kanai for at least reasons similar to those advanced above with respect to amended claim 13. Kanai fails to cure the above-noted deficiencies of Fermilab and withdrawal of the rejection is respectfully requested.

Based on each of the foregoing, claims 10-12, 16-18, and 23 are patentable over Fermilab in view of Kanai and withdrawal of the rejection is respectfully requested.

Early issuance of a Notice of Allowance is courteously solicited.

**Conclusion**

All objections and rejections having been addressed, it is respectfully submitted that the present application should be in condition for allowance and a Notice to that effect is earnestly solicited.

The Examiner is invited to telephone the undersigned, Applicant's attorney of record, to facilitate advancement of the present application.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 08-2025 and please credit any excess fees to such deposit account.

Respectfully submitted,  
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